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| GREG MALONE, | : | Order Docketing, Dismissing, and |
| Appellant | : | Referring Appeal to Assistant |
| | : | Secretary - Indian Affairs |
| v. | : | |
| | : | |
| DEPUTY TO THE ASSISTANT | : | |
| SECRETARY - INDIAN AFFAIRS/ | : | Docket No. IBIA 91-9-A |
| DIRECTOR (INDIAN EDUCATION | : | |
| PROGRAMS), BUREAU OF INDIAN : | : | |
| AFFAIRS, | : | |
| Appellee | : | October 29, 1990 |

On October 26, 1990, the Board received an apparent notice of appeal from Greg Malone, through counsel, David J. Rapport, Esq., Ukiah, California. 1/ Appellant seeks review of a September 20, 1990, decision of the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs), holding that he was not eligible to receive a Bureau of Indian Affairs higher education grant under 25 CFR Part 40.

Under 25 CFR Part 2, decisions of the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs) are appealable to the Assistant Secretary - Indian Affairs rather than the Board of Indian Appeals. See 25 CFR 2.20(g); 2.4(e). The Deputy's decision advised appellant that his decision was appealable to the Assistant Secretary. 2/

Under 25 CFR 2.4(e), this Board lacks jurisdiction over appeals from decisions of the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs).

1/ It is possible that the notice sent to the Board, even though it appears to be the original, was actually intended to be a copy of an appeal to the Assistant Secretary - Indian Affairs. The Board issues this order to prevent confusion concerning the venue of this matter.

2/ The appeal information in the Deputy's decision, however, was incomplete. Under 25 CFR 2.7, an appellant's right to appeal continues until correct appeal information is given. Therefore, the Assistant Secretary may want to consider accepting this appeal even if it is untimely by the time it reaches him. Cf. Rangel v. Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs), 19 IBIA 44 (1990); Lovelock Paiute Tribe v. Acting Phoenix Area Director, 18 IBIA 249, 250 (1990).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the September 20, 1990, decision of the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs) is docketed under the above case number, dismissed for lack of jurisdiction, and referred to the Assistant Secretary - Indian Affairs.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge